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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13
14 v.
15 DANIEL VINCENT SALAZAR,
Defendant.

CASE NO. 1:20-CR-00025-NONE-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

PROPOSED DATE: December 16, 2020
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

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17 This case is scheduled for a status conference on November 30, 2020, but the parties have agreed
18 to move this hearing to December 16, 2020, at 1:00 p.m.. This Court has issued General Orders 611-624
19 to address public health concerns related to COVID-19, including the temporary suspension of jury trials
20 and restrictions on access to court buildings. Initially the Fresno courthouse was closed through June
21 15, 2020, but it has since been closed until further notice.

22 Although the General Orders address district-wide health concerns, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open-
24 endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner*
25 *v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
27 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering and ends-of-justice continuance must set forth explicit findings on the record "either
orally or in writing").

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7). When continued, this Court should designate a new date for the hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, accordingly stipulate as follows:

1. By previous order this matter was set for a status conference hearing on November 30, 2020. The Court more recently has invited a continuance of this hearing if counsel do not believe that anything substantial can be accomplished at the currently scheduled hearing. The court also asked the

1 parties to determine whether there are actually issues in dispute generated by the defense discovery
2 motion.

3 2. By this stipulation, the parties agree that the status conference be scheduled for
4 November 30, 2020, and to continue to exclude time through November 30, 2020, under 18 U.S.C. §§
5 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv).

6 3. The parties agree, and request that the Court find the following:

7 a) Counsel for defendant have filed a discovery motion about which the parties have
8 communicated. The main FBI agent has relocated to a different office, and this has slowed
9 communication with local law enforcement which conducted much of the initial investigation in
10 this case. Additional time is needed to determine whether any requested items are available and
11 can be provided.

12 b) The parties agree that little will be accomplished at the currently-scheduled
13 hearing date, so have agreed to continue the hearing until December 16, 2020.

14 c) In addition to the public health concerns cited by General Orders 611 and 612 and
15 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
16 this case because counsel or other relevant individuals have been encouraged to telework and
17 minimize personal contact to the greatest extent possible. It will be difficult to avoid personal
18 contact should the hearing proceed.

19 d) Based on the above-stated findings, the ends of justice served by continuing the
20 case as requested outweigh the interest of the public and the defendant in a trial within the
21 original date prescribed by the Speedy Trial Act.

22 e) Based on the above-stated findings, the ends of justice served by continuing the
23 case as requested outweigh the interest of the public and the defendant in a trial within the
24 original date prescribed by the Speedy Trial Act.

25 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
26 et seq., within which trial must commence, the time period from the last court appearance
27 through November 30, 2020, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A)
28 and 3161(h)(7)(B)(i), (ii) and (iv) because it results from a continuance granted by the Court at

1 the request of the parties on the basis of the Court's finding that the ends of justice served by
2 taking such action outweigh the best interest of the public and the defendant in a speedy trial.

3 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
4 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
5 must commence.

6 IT IS SO STIPULATED.

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8 Dated: November 20, 2020

MCGREGOR W. SCOTT
United States Attorney

9
10 /s/ David Gappa

David Gappa
Assistant United States Attorney

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12
13 Dated: November 20, 2020

/s/ Matt Lemke

Matt Lemke
Counsel for Defendant
DANIEL VINCENT SALAZAR

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

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FINDINGS AND ORDER

The Court has reviewed and considered the stipulation filed by the parties on November 30, 2020, and also reviewed the record of this case. For the reasons stated in the parties' stipulation, the period of time from the last court appearances through December 16, 2020, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv) because it results from a continuance granted by the Court at the request of the parties on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: **November 23, 2020**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE